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**2003 Wis Eth Bd 16**  
**LOCAL CODE – INFLUENCING OFFICIAL JUDGMENT**

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The Ethics Board recommends that an official who is a member of a city's plan commission not simultaneously serve on the commission and solicit more than insignificant contributions from individuals or entities that are likely to become involved in matters that will be materially affected by actions of the plan commission.

Facts

This opinion is based upon these understandings:

- a. You are a city attorney.
- b. The city's mayor serves on the city's plan commission.

Questions

¶1 The Ethics Board understands your question to be:

What restrictions, if any, does §19.59, *Wisconsin Statutes*, place on a city official's solicitation of contributions to the city to sponsor entertainment events for the public?

Discussion

¶2 The statutory provision most pertinent to your question is §19.59 (1) (b), *Wisconsin Statutes*. That section provides:

**19.59 (1) (b)** No person may offer or give to a local public official, directly or indirectly, and no local public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the local public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the local public official. This paragraph does not prohibit a local public official from engaging in outside employment.

¶3 A mayor and a member of a city's plan commission are local public officials subject to this section.<sup>1</sup> Using the title or prestige of office to solicit

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<sup>1</sup> Section 19.42 (7u), *Wisconsin Statutes*, provides:

**19.42 (7u)** "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a

contributions to the city is a use of office.<sup>2</sup> A contribution to the city is likely something of substantial value.<sup>3</sup> The prohibition of §19.59 (1) (b) applies whether contributions that are solicited are directed toward the official's own benefit or to the benefit of another.<sup>4</sup> The statutory bar extends to the solicitation or acceptance of contributions to a governmental unit.<sup>5</sup>

¶4 The question then is whether the response to a particular solicitation could reasonably be expected to influence an official's actions or judgment or reasonably be considered a reward for past action. Section 19.59 (1) (b)'s application depends on an objective, not a subjective standard; it proscribes an official's solicitation of anything of value if an impartial observer could reasonably expect the response to the solicitation to influence the official's judgment in matters related to his or her office.<sup>6</sup> It is unreasonable to think

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political subdivision or special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing.

1997 Wis Eth Bd 6 ¶6.

Section 19.42 (7x), *Wisconsin Statutes*, provides:

**19.42 (7x)** "Local public official" means an individual holding a local public office.

Section 19.42 (7w), *Wisconsin Statutes*, provides:

**19.42 (7w)** "Local public office" means any of the following offices, except an office specified in sub. (13):

(a) An elective office of a local governmental unit.

\* \* \*

(c) An appointive office or position of a local governmental unit in which an individual serves for a specified term, except a position limited to the exercise of ministerial action or a position filled by an independent contractor.

<sup>2</sup> 1994 Wis Eth Bd 1 ¶5 ("The Ethics Board consistently has found that use of public position includes use of the position's title or prestige and that the restrictions apply to soliciting even for charitable organizations with which the official is associated."); 1991 Wis Eth Bd 6; 10 Op Eth Bd 47 (1988); 9 Op Eth Bd 45 (1987); 9 Op Eth Bd 21 (1986).

<sup>3</sup> Substantial value is something more than token or inconsequential value. 1995 Wis Eth Bd 5 ¶6; 7 Op Eth Bd 2 (1983).

<sup>4</sup> 1996 Wis Eth Bd 14 ¶ 6; 1995 Wis Eth Bd 7; 1994 Wis Eth Bd 1; 4 Op Eth Bd 93 (1981); 4 Op Eth Bd 51 (1980).

<sup>5</sup> 1996 Wis Eth Bd 14 ¶6; 1995 Wis Eth Bd 7; 10 Op Eth Bd 31 (1988); 9 Op Eth Bd 9 (1986); 7 Op Eth Bd 19 (1983).

<sup>6</sup> 1998 Wis Eth Bd 05 ¶11; 1996 Wis Eth Bd 14, *supra*, ¶7; 4 Op Eth Bd 93, *supra*; 4 Op Eth Bd 51, *supra*.

that an official's actions or judgment would be influenced by a contribution given by a person with respect to whom the official's office does not exercise any action at all, exercises only ministerial action or action generally applicable to a broad class of interests, or if the contribution is only of modest value.<sup>7</sup>

¶5 A city's plan commission has quasi-judicial responsibilities. It makes decisions that affect specific landowners and developers. In interpreting the Ethics Code's counterpart provision for state officials, the Board has repeatedly advised that officials not solicit contributions from individuals or entities that are likely to be materially affected by actions which the official's agency is called upon to take or that do business with the agency.<sup>8</sup>

### Advice

¶6 The Ethics Board recommends that an official who is a member of a city's plan commission not simultaneously serve on the commission and solicit more than insignificant contributions from individuals or entities that are likely to become involved in matters that will be materially affected by actions of the plan commission.<sup>9</sup>

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<sup>7</sup> 1998 Wis Eth Bd 05 ¶11; 1992 Wis Eth Bd 23; 7 Op Eth Bd 19 (1983); 4 Op Eth Bd 51, *supra*.

<sup>8</sup> 1998 Wis Eth Bd 05 ¶11; 10 Op Eth Bd 31, *supra*; 9 Op Eth Bd 9 (1986), 7 Op Eth Bd 9 (1983). To do otherwise works against an official's impartiality and harms the agency's or local government's credibility. 10 Op Eth Bd. 31, *supra*.

<sup>9</sup> 1994 Wis Eth Bd 01.